

Before the
Federal Communications Commission
Washington DC 20554

In the Matter of:

)	
Request for Review or Waiver of a Decision)	
of the Schools and Libraries Division)	Administrator Decision Dated July 16, 2008
from Jackson, Mississippi Public Schools)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

Request for Review or Waiver

In accordance with Sections 54.719 through 54.721 of the Commission's Rules, now comes Jackson, Mississippi Public Schools (Jackson) before the Federal Communications Commission (Commission) requesting review or waiver of a decision of the Universal Service Administrative Company (Administrator). This request comes before the Commission in a timely manner from the Administrator decision dated July 16, 2008.

Appellant: Jackson City Mississippi Public Schools

BEN: 128645

Form 471: 486547

FRN: 1349960

Administrator's Decision on Invoice Deadline Extension Request dated 7/16/2008¹

Decision Text: Request received after the FCC deadline for Implementation Deadline Extension requests which was 9/30/2007. In accordance with the FCC Report and Order (FCC 01-195) released on June 29, 2001, the Administrator may grant an extension of time for the implementation of non-recurring services if the implementation is delayed for circumstances beyond the named service provider's control. You have been unable to establish such circumstances.

¹ This is the exact language required by the Administrator's decision; however, this is an appeal for a Service Delivery Deadline.

Background

Jackson Public Schools filed an E-Rate discount application on February 18, 2005 for Internal Connection equipment and installation to be delivered in E-Rate Fund Year 2005. The services and equipment requested was a major, multi-faceted technology capital project for the district with a total cost of \$3,771,000. Based on the 88 percent discount for Jackson, the total funding request was \$3,318,637. Services were secured under a State Master Contract negotiated by the state of Mississippi.

After a lengthy review, a Funding Commitment Letter was issued on May 5, 2006. Because the commitment letter was issued after March 1 of the fund year, the deadline for service delivery was automatically extended to September 30, 2007.² Jackson began ordering services under the contract in stages. By the summer of 2007 a substantial amount of work had been completed and the service provider, Venture Technologies (Venture) invoiced the Administrator for the non-discounted portion of eligible equipment and services for a total of \$2,669,638.

In December 2007 Jackson submitted an order to Venture to complete the project. It appears Jackson contacted the Administrator for direction and was instructed to submit a request to extend the contract. On December 20, 2007 Jackson submitted an FCC Form 500 requesting a contract extension from June 30, 2006 to February 29, 2008 (Attachment 1). On January 24, 2008 the Administrator granted the contract extension request (Attachment 2). Venture ordered equipment for the on February 5, 2008.

Jackson realized work may not be complete by the approved contract extension deadline and submitted a second Form 500 on March 14 to extend the contract to June 30, 2008 (Attachment 3). This extension request was granted by the Administrator on March 24, 2008 (Attachment 4). Venture was however able to complete the project and requested final payment from the Administrator on February 27, 2008; however, the last date to invoice for this funding request was January 28, 2008 and the invoice was denied.

On March 14, 2008 Jackson submitted to the Administrator an Invoice Deadline Extension Request (Attachment 5). On April 30, 2008 the Administrator granted the Invoice Deadline Extension Request (Attachment 6). When the first invoice was denied, Venture contacted the Administrator and was told a Service Deadline Extension Request should have been filed. On April 1, 2008 Jackson submitted to the Administrator a Service Deadline Extension Request (Attachment 7). On July 16, 2008 the Service Deadline Extension Request was denied (Attachment 8). This appeal is timely filed within 60 days of the July 16 decision.

² 47 C.F.R. § 54.507(d)(1)

Discussion

Jackson applied for E-Rate discounts for this long-term project and prudently staged its implementation over a period of time. The final stage was delayed until after the last day to perform service because of school district implementation issues. Jackson, at the request of Venture, consulted with the Administrator and relied on advice from the Administrator to file an FCC Form 500 to extend the contract (see email from Joe Rucker, Venture Technologies dated July 22, 2008 and submitted here as Attachment 9). The Contract Extension Request was approved on January 24, 2008. Venture, assured of being paid for the non-discounted portion of the service with the Contract Extension Approval from the Administrator in hand, completed the job. Neither Jackson nor Venture was aware of the requirement to file a Service Deadline Extension Request until after the services were rendered and invoices submitted despite a previous request for guidance of the Administrator.

The Commission allows the Administrator to grant Service Deadline Extensions under certain criteria, including circumstances beyond the service provider's control.³ In Jackson's Service Delivery Extension Request, Mr. Gavin Guynes, Director of Information Systems at the time, stated "...we had to divide the implementation of this project into multiple stages. This required the service provider, Venture, to deliver the equipment in stages, as *we needed and requested.*" (emphasis added). Clearly, the timing of this segment of the contract was dictated not by Venture but Jackson. Venture was unable to complete implementation for reasons beyond Venture's control.

The Commission has granted a number of appeals for of service deadline violations when the applicant could show that one of the required criteria was met.⁴ The Administrator cited a failure to meet the required criteria when denying the Service Deadline Extension Request. Based on the evidence provided in Jackson's Service Deadline Extension Request and the Venture email of July 22, there is absolutely no question that criterion three is met in this instance.

Realizing that some sort of Administrator approval would be necessary and confirmed with a contact with the Administrator, Jackson submitted a Form 500 requesting a contract extension solely for the Funding Request Number here under appeal. When the Form 500 was submitted the deadline for service delivery had already passed. Nonetheless, the Administrator approved the

³ 47 C.F.R. § 54.507(d)(3) "The applicant's service provider is unable to complete implementation for reasons beyond the service provider's control"

⁴ See California Youth Authority, et al. DA 07-1187, Rel. March 9, 2007; and Great Rivers Education Cooperative, DA 06-2458, Rel. December 4, 2006.

extension request. Relying on the approval letter to its detriment, Venture delivered the service and submitted an invoice to the Administrator. The invoice was denied not because of a service deadline violation but because it was submitted after the January 28 invoice deadline. Jackson submitted an Invoice Deadline Extension Request which was granted. The new invoice deadline was August 27, 2008.

FCC Form 500

The FCC Form 500 has four distinct purposes:

- To adjust the Funding Year Service Start Date reported on a previously filed Form 486 for this Funding Year
- To adjust the Contract Expiration Date listed on your Form 471 application for this Funding Year
- To cancel irrevocably and totally a Funding Request Number (FRN)
- To reduce irrevocably the amount of a Funding Request Number (FRN)⁵

Within the form itself, Item (B) specifies the particular FRN to be adjusted. The December 20, 2007 Form 500 filed by Jackson requested a contract extension for FRN 1349960, the FRN here under appeal. The Administrator approved the contract extension request in correspondence dated January 24, 2008. The Administrator approved a contract extension associated with a funding request that was in fact expired according to strict adherence of program rules. The extension request should not have been granted for this FRN by the Administrator and services would not have been rendered.

Once work was completed, Venture submitted to the Administrator an invoice for the discounted portion of eligible equipment and services. The invoice was submitted to the Administrator after the Administrator Last Date to Submit Invoice of January 28, 2008. The Administrator indicated the invoice was submitted late and on March 14, 2008, Jackson requested an invoice extension for this FRN. The Administrator approved the request on April 30.

Despite the fact that services were rendered after the service delivery deadline, Venture was denied payment not because of a service delivery deadline violation but an invoice deadline violation. After the Invoice Deadline Extension request was granted, Venture could have submitted a second invoice and most likely would have received payment from the Administrator. Discovery of the apparent program rule violation would only have been made with an audit of Jackson or Venture. The only reason a second invoice was not submitted by Venture was because Venture called the Administrator and was told a Service Delivery Extension Request should have been submitted. As noted in the July 22 Venture email, different areas of (SLC) handle different types of extension requests and it would not be unusual to be told a contract extension would be needed but not told

⁵ FCC Form 500 Instructions Page 1

a service deadline extension would be needed. Indeed, this case shows the Administrator will grant a contract extension and an invoice extension for an FRN that has expired.

It should be noted here that complex program regulations and policies and incorrect initial advice from the Administrator resulted in this situation. The Commission has granted numerous appeals and given the Administrator great latitude for granting appeals when program complexity and applicant confusion contribute to minor policy violations.⁶

Another reason cited for denial was that Jackson's Service Deadline Extension Request was "...received after the FCC deadline for Implementation Deadline Extension requests which was 9/30/2007". Although the FCC in its *Nonrecurring Services Order*⁷ empowered the Administrator to review and decide requests for service delivery extensions, the Administrator has construed its authority to be limited to deciding only those requests for extensions due to circumstances beyond the service provider's control that are submitted on or before the original service delivery deadline. The only basis for this narrow interpretation is language from paragraph 15 of the *Nonrecurring Services Order* that states, "Similar to the requirements outlined in the November 2000 Extension Order, applicants who wish to satisfy criteria (3) should submit documentation to the Administrator requesting relief on these grounds *on or before the original non-recurring services deadline.*" (emphasis added). This directive should be viewed as prescriptive and not mandatory, since this timing requirement – to submit the deadline extension request on or before the original non-recurring services deadline – was *not* codified in the associated regulation. The regulation states:

(d) Annual filing requirement. Schools and libraries, and consortia of such eligible entities shall file new funding requests for each funding year no sooner than the July 1 prior to the start of that funding year. Schools, libraries, and eligible consortia must use recurring services for which discounts have been committed by the Administrator within the funding year for which the discounts were sought. The deadline for implementation of non-recurring services will be September 30 following the close of the funding year. *An applicant may request and receive from the Administrator an extension of the implementation deadline for non-recurring services if it satisfies one of the following criteria:*

- (1) The applicant's funding commitment decision letter is issued by the Administrator on or after March 1 of the funding year for which discounts are authorized;
- (2) The applicant receives a service provider change authorization or service substitution authorization from the Administrator on or after March 1 of the funding year for which discounts are authorized;
- (3) The applicant's service provider is unable to complete implementation

⁶ Arkansas Department of Information Systems, DA 08-1418; Academy of Excellence, FCC 07-60; and Bishop Perry, FCC-06-54.

⁷ FCC 01-195, Rel. June 29, 2001

for reasons beyond the service provider's control; or

(4) The applicant's service provider is unwilling to complete installation because funding disbursements are delayed while the Administrator investigates their application for program compliance.⁸

The regulation is silent as to a deadline for submitting the request for extension.

Conclusion

Jackson Public Schools entered into a long-term capital project in accordance with E-Rate regulations. Once a Funding Commitment Letter was received, services were utilized in a thoughtful, measured approach to efficiently complete the project with limited disruption to educational activities.

The final facet of the project was delayed until after the last date to receive services because of an oversight by the former director of technology. The service provider was unable to complete installation in a timely manner because of circumstances beyond the control of the service provider, in accordance with criteria three of 47 C.F.R. §54.507(d).

Jackson requested and received approval for contract extensions and an invoice deadline extension. Because of incomplete advice by the Administrator and confusion inherent and often acknowledged regarding the E-Rate program, a service deadline extension request was not timely filed.

The Administrator improperly denied the service deadline extension request because of a misinterpretation of 47 C.F.R. §54.507(d). The Administrator should be allowed to grant service deadline extension requests within a reasonable time after the last date to complete services just as the Administrator may now grant invoice extensions submitted after the last date to submit invoices.

Finally, the services here under appeal were the most cost effective services available to Jackson. They were procured in accordance with state contract law and were secured under a State Master Contract. There was absolutely no waste, fraud or abuse of the E-Rate program with this request.

Respectfully submitted this 12th day of September, 2008

S/S

Michael Thomas

⁸ 47 C.F.R. §54.507(d).

Jackson Public Schools
662 South President
Jackson, MS 39225-2338
(601) 973-8522